

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pacific Broadcasting Company)	
Licensee of Station KDB (FM))	File No. EB-02-LA-142
Santa Barbara, California)	NAL/Acct. No. 200232900006
Facility ID # 51169)	FRN 0003-7476-31
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 30, 2002

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Pacific Broadcasting Company ("Pacific"), licensee of station KDB, Santa Barbara, California, apparently willfully violated Section 11.61 of the Commission's Rules ("Rules")¹ by failing to monitor either of the Local Primary stations ("LP1" and "LP2") designated in the Emergency Alert System ("EAS") Local Area Plan for Santa Barbara County, and failing to receive and retransmit required weekly and monthly EAS tests. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Pacific is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

II. BACKGROUND

2. On February 12, 2002, Agents of the Los Angeles Office inspected KDB. At the time of inspection, neither the designated LP1 (station KHTY) or LP2 (station KTYD) was being monitored. In fact, only one source was being monitored in violation of Section 1.6 of the Santa Barbara County Emergency Alert System Plan which requires that two local primary sources be monitored. Station KDB was monitoring the National Weather Service, a recommended additional source but not a replacement for the designated local primary stations. A thorough review of the station log for the period beginning January 1, 2002 through February 12, 2002, revealed that station KDB was only monitoring one source, the National Weather Service (KLOX). The station logs also revealed that none of the required monthly or weekly tests from the designated LP1 and LP2 sources had been received or retransmitted during the period from January 1, 2002 through February 12, 2002.

¹ 47 C.F.R. § 11.61.

² 47 U.S.C. § 503(b).

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

4. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁵ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁶ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁷

5. The Rules require all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation.⁸ The Rules also require AM and FM stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.⁹ Based on the evidence before us, we find that on February 12, 2002, Pacific willfully violated Section 11.61 of the Commission's Rules by failing to monitor the LP1 and LP2 stations as designated in the EAS Local Area Plan for Santa Barbara County and failing to receive or retransmit the required monthly and weekly EAS tests.

6. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),¹⁰ and Section 1.80 of the Commissions Rules,¹¹ for EAS equipment not installed or

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. §§ 11.11 and 11.41.

⁶ 47 C.F.R. §§ 11.1 and 11.21.

⁷ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

⁸ 47 C.F.R. § 11.35.

⁹ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. See also, *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.)

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

operational is \$8,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the Commission's rule requiring the monitoring, receipt and retransmission of the required monthly and weekly EAS tests from the designated LP1 and LP2 sources. Therefore we must determine what an appropriate amount should be for this violation.¹² It is necessary to monitor the designated LP1 and LP2 sources and to receive and retransmit the required EAS tests from these designated sources to ensure the operational integrity of the EAS system in the event of an actual disaster. The requirement that stations monitor, receive and retransmit the required EAS tests is similar in both nature and severity to other required operational readiness checks. As failure to make measurements or conduct required monitoring carries a base forfeiture amount of \$2,000, pursuant to the *Forfeiture Policy Statement*, the forfeiture will be assessed in the amount of \$2,000.

7. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹³ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$2,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁴ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Pacific Broadcasting Company is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for violation of Section 11.61 of the Rules.¹⁵

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹⁶ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Pacific Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement

¹¹ 47 C.F.R. § 1.80.

¹² The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the...[*Forfeiture Policy Statement*]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17,099. See e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.61.

¹⁶ 47 C.F.R. § 1.80.

Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

14. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 2510 0001 5861 0209, Return Receipt Requested, to Pacific Broadcasting Company, 23 W. Micheltorena St., Santa Barbara, California 93101.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Los Angeles Office

¹⁷ See 47 C.F.R. § 1.1914.